

MINUTES OF THE CITY OF BURLINGTON  
CITY COUNCIL MEETING  
November 16, 2010

The City Council of the City of Burlington held a regularly scheduled meeting in the Council Chamber, Municipal Building, 425 South Lexington Avenue, Burlington, N. C., 27216-1358, on November 16, 2010, at 7:00 p.m.

Mayor Ronnie K. Wall presided

Councilmembers Present: Mayor Wall, Councilmembers Huffman, Butler, Ross and Faucette

Councilmembers absent: None

Harold Owen, City Manager: Present

Robert M. Ward, City Attorney: Present

Jondeen D. Terry, City Clerk: Present

INVOCATION: Councilmember Jim Butler

PROCLAMATION: Arbor Day - November 17, 2010

REPORT: ABC Legislation - Haywood Simpson, Chairman, ABC Board

Mr. Simpson reported that the City of Burlington received \$326,000 from the ABC Board for year-ending July 1, 2010. He stated there was something on the horizon that could jeopardize the whole system. He said that the state was facing a \$3.5 billion deficit and that Governor Perdue had appointed a committee to consider doing away with the present system and going to a private system. He pointed out that profit would go to the owner of the stores if privatized and that the state would get revenue by selling franchises. Mr. Simpson said that if privatized, control would be lost, that anyone could buy alcohol anytime, anywhere as opposed to it being controlled now. He said that law enforcement, health issues and drunk driving would increase. He said it had been proven that an increase in availability increases consumption which increases violence. Mr. Simpson pointed out that if privatized 32 local full-time employees would be without jobs.

Mr. Simpson said there was a resolution stating that the City was in favor of leaving it the way it is. He suggested talking with folks from the North Carolina League of Municipalities and to request it offer formal opposition to privatization.

Councilmember Butler said that state government wanted to look to local government to fund its projects. Councilmember Butler suggested calling the legislators and asking them to oppose privatization. He said the Council needed to look at the resolution and endorse it if it met the blessings of the Council.

Mayor Wall suggested placing the resolution on the December 7, 2010, Council agenda.

### MINUTES

Mayor Wall called for approval of the City Council minutes of the November 1, 2010, work session and the November 2, 2010, City Council meeting.

Upon motion by Councilmember Ross, seconded by Mayor Pro Tem Huffman, it was resolved unanimously to approve the minutes of the above-referenced meetings.

### ADOPTION OF AGENDA

Upon motion by Mayor Pro Tem Huffman, seconded by Councilmember Ross, it was resolved unanimously to adopt the agenda.

### CONSENT AGENDA:

#### ITEM 1:

- A) To approve the 2011 City Council and work session meetings schedule as follows:

#### Work Session:

January 3  
January 31  
March 14  
April 4  
May 2  
June 6  
July 18

#### City Council:

January 4 and 18  
February 1 and 15  
March 1 and 15  
April 5 and 19  
May 3 and 17  
June 7 and 21  
July 5 and 19

August 1  
September 19  
October 3  
November 14  
December 19

August 2 and 16  
September 6 and 20  
October 4 and 18  
November 1 and 15  
December 6 and 20

B) To temporarily waive sanitation bulk pick-up fees between February 14, 2011, and April 1, 2011, to allow residents to place large amounts of bulk household and yard waste items for pick-up at no cost.

C) To approve the following Traffic Commission recommendations:

- 25 mile per hour speed limit on Highland Avenue.
- No parking zone between the hours of 7:30 a.m. to 4:00 p.m. on school days for the northeast side of Whitsett Street from the intersection of Williamson Street to the intersection of Border Street.
- Stop sign at the intersection of Enoch Street, eastern approach to Ray Street.

10-26

AMENDMENT TO THE CITY OF BURLINGTON TRAFFIC ORDINANCE

BE IT ORDAINED by the City Council of the City of Burlington:

A) To adopt an ordinance approving the following Traffic Commission recommendations:

- 25 mile per hour speed limit on Highland Avenue.
- No parking zone between the hours of 7:30 a.m. to 4:00 p.m. on school days for the northeast side of Whitsett Street from the intersection of Williamson Street to the intersection of Border Street.
- Stop sign at the intersection of Enoch Street, eastern approach to Ray Street.

B) That all ordinances or parts of ordinances inconsistent or in conflict with this ordinance are hereby repealed.

C) That this ordinance shall take effect upon passage.

D) Budget Amendment 2011-19 - Planning - MPO Budget - Local Match Increase

BA2011-19

Increase Revenues:

|                |                            |           |
|----------------|----------------------------|-----------|
| 010-39398-0000 | Appropriated Fund Balance  | \$ 42,000 |
| 020-38390-0000 | Transfers from Other Funds | 42,000    |
| 020-33100-0000 | NCDOT - PL 104             | 210,000   |

Increase Expenditures:

|                |                         |           |
|----------------|-------------------------|-----------|
| 010-50502-9100 | Operating Transfers Out | \$ 42,000 |
| 020-41410-1900 | Professional Services   | 252,000   |

E) Budget Amendment 2011-20 - General Administration - Employee Bonus

BA2011-20

Increase Revenues:

|                |                               |           |
|----------------|-------------------------------|-----------|
| 030-39398-0000 | Appropriated Fund Balance-W&S | \$ 74,213 |
| 010-39398-0000 | Appropriated Fund Balance-GF  | 278,294   |

Increase Expenditures:

|                |                      |           |
|----------------|----------------------|-----------|
| 010-50502-0200 | Salary Appropriation | \$225,000 |
| 010-50502-0500 | FICA Taxes           | 21,290    |
| 010-50502-0700 | Retirement           | 18,090    |
| 010-50502-0800 | 401K                 | 13,914    |
| 030-66661-0200 | Salary Appropriation | 60,000    |
| 030-66661-0500 | FICA Taxes           | 5,678     |
| 030-66661-0700 | Retirement           | 4,824     |
| 030-66661-0800 | 401K                 | 3,711     |

Upon motion by Councilmember Butler, seconded by Councilmember Faucette, it was resolved unanimously to approve the foregoing consent agenda.

PUBLIC HEARINGS:

ITEM 2: CITIZEN COMMENTS - FY 2010-11 - COMMUNITY DEVELOPMENT ACTION PLAN AMENDMENT

Mayor Wall announced that a public hearing had been scheduled to receive citizen comments on the proposed amendment for the 2010-11 One-Year Action Plan of the Community Development Block Grant Program.

Ms. Shawna Tillery, Community Development Administrator, stated that there was \$66,702.81 that was carried forward from the last two fiscal years due to projects that came in under budget. She said that money would be reallocated to the following four projects:

1. Fairchild Park Improvements - purchase tables and chairs for Fairchild Community Center (\$11,284.68).
2. North Park Improvements - purchase a water fountain and install six permanent picnic sites with concrete slabs at North Park (\$13,058.13).
3. Picnic Site Improvements - purchase permanently placed picnic tables and grills for Elmira, Northwest, Robinson, Fairchild, North Park and Forest Hills Parks (\$121,360).
4. Playground Equipment Upgrade - purchase upgraded playground equipment for Robinson Park, Petersburg Park, North Park, Forest Hills and Fairchild Park (\$30,000). She said that would include a match from Game Time.

There were no comments from the public.

Upon motion by Mayor Pro Tem Huffman, seconded by Councilmember Ross, it was resolved unanimously to close the public hearing.

Councilmember Huffman commended Council and staff for continuing to use CDBG funds for infrastructure for low-income areas. He said it also helps investment in the town by taking care of the parks.

Councilmember Faucette said with the utilization of these funds for improvement of the parks in the eastern part of the City, there will be more usage. He thanked the Parks and Recreation staff for its work.

Councilmember Butler asked about the match from Game Time, and Parks and Recreation Director Tony Laws explained that Game Time was matching the City's contribution to buy additional equipment. Councilmember Butler asked if their prices were competitive and Mr. Laws said they were very competitive. Mr. Laws explained that Game Time had a promotion in which they would match money spent for playground equipment.

Ms. Tillery said the new equipment at Forest Hills was to be used with the Wee-School program.

Ms. Tillery said there would be a budget amendment at the December 7, 2010, Council meeting and after that the equipment would be ordered.

Upon motion by Mayor Pro Tem Huffman, seconded by Councilmember Faucette, it was resolved to approve the amendments.

### ITEM 3: REZONE PROPERTY - GRAHAM AND GILMER STREETS

Mayor Wall announced that a public hearing had been scheduled to consider an application to rezone from R-9, Residential District, to CI, Conditional Industrial District, to allow the use of the property for offices; warehouses; outdoor storage; no storage of tires except for the owner's personal use; and no storage of inoperable vehicles. The property is located at the northeast corner of Graham Street and Gilmer Street as shown on Alamance County Tax Map 32-120-108.

Planning and Economic Development Director Bob Harkrader said this was a proposed conditional rezoning request located off of Webb Avenue. He stated it was coming to Council with a favorable recommendation from the Planning and Zoning Commission. He explained that there was discussion among the Planning and Zoning Commission members and that the petitioner agreed to amend the request as stated above. Mr. Harkrader pointed out that it was an older industrial building and that directly across the street was I-3 zoning which was the most permissive industrial zoning. Mr. Harkrader said it was unlikely that it would be used for residential.

Mr. Charles Bateman, Jr., attorney, introduced Mr. Keith Neighbors, the applicant, who owns a local landscaping business along with several other related businesses. He said the building had been there for 100 years, before Burlington had a zoning ordinance. He said that it was formerly Burlington Knitting and was later used as a warehouse by Burlington Roofing Company. Mr. Bateman stated that Mr. Neighbors hoped to continue to use it as a warehouse. He stated the building was unsuitable for any other use.

Mr. Neighbors stated the tires that he used would be stored inside the building.

Fire Chief Jay Smith pointed out that the fire code limited the amount and height for storage of indoor tires.

Upon motion by Councilmember Faucette, seconded by Councilmember Butler, it was resolved unanimously to close the public hearing.

Mayor Pro Tem Huffman moved for the adoption of the following ordinance:

10-27

ORDINANCE TO AMEND OFFICIAL ZONING MAP (Rezone Property at Corner of Graham Street and Gilmer Street)

BE IT ORDAINED by the City Council of the City of Burlington, North Carolina:

Section 1. That the official zoning map, an element of the Burlington Zoning Ordinance, and the Comprehensive Land Use Plan are hereby amended by rezoning from R-9, Residential District, to CI, Conditional Industrial District, subject to those conditional uses with limitations as set forth in Sections 2, 3 and 4 of this ordinance the area described as follows:

Property located at the northeast corner of Graham St. and Gilmer St. as shown on Alamance County Tax Map 32-120-108.

Section 2. That the rezoning from R-9 to CI is hereby authorized subject to the following Use and Development Conditions:

Use Conditions

1. Warehouses.
2. Outdoor storage.
3. No storage of tires except for the owner's personal use.
4. No storage of inoperable vehicles.

Development Conditions

An opaque fence shall surround all outdoor storage areas not otherwise adequately screened by foliage/vegetation. The existing fence as well as new fencing shall be between 5.5 feet and 6.5 feet in height.

Section 3. This property will be perpetually bound to the uses authorized and subject to such conditions as imposed including site plans and other submissions, unless subsequently changed or

amended as provided for in the City of Burlington Zoning Ordinance.

Section 4. Any violations or failure to accept any conditions and use limitations imposed herein shall be subject to the remedies provided in the City of Burlington Code of Ordinances and Zoning Ordinance.

Section 5. That all ordinances or parts of ordinances inconsistent or in conflict with this ordinance are hereby repealed.

Section 6. That this ordinance shall take effect upon passage.

The foregoing ordinance was seconded by Councilmember Butler, and after full discussion, the same was voted upon and declared duly adopted, no amendments having been offered and consent having been given to place the same upon its immediate passage. Councilmembers voting in favor of the motion to adopt the foregoing ordinance were Wall, Huffman, Butler, Ross and Faucette.

#### ITEM 4: ADOPTION OF RIPARIAN BUFFER PROTECTION ORDINANCE

Mayor Wall announced that a public hearing had been scheduled to consider adopting the Riparian Buffer Protection Ordinance to improve the water quality in B. Everett Jordan Lake.

Stormwater Manager Michael Layne stated that adoption of the ordinance was the end of a long process that was required by the Jordan Lake Rules. He said the purpose of buffers was to control the undisturbed or managed property adjacent to streams. He explained that it was good to encourage buffers from an environmental standpoint to reduce velocity and to promote infiltration and nutrient uptake. He pointed out that buffers provide stream stability, a canopy and help protect habitat in streams.

Mayor Wall asked for comments from the public, and Mr. Richard Parker asked if fallen trees could be removed.

Mr. Layne replied that the ordinance provided for exceptions and fallen trees were one of them.

There were no other public comments.



Mr. Layne stated that approval of this ordinance was required by Jordan Lake Nutrient Management Strategy. He stated that enforcement included civil and criminal penalties. He said that the NC Division of Water Quality would handle enforcement outside Burlington's jurisdiction through a complaint-driven process and Burlington's enforcement would basically follow that model. Mr. Layne said that if approved, there would be an extensive public outreach/education program.

Upon motion by Mayor Pro Tem Huffman, seconded by Councilmember Butler, it was resolved unanimously to close the public hearing.

Councilmember Butler moved for the adoption of the following ordinance:

**10-28**

**City of Burlington  
Riparian Buffer Protection Ordinance  
[for Lands within the Jordan Watershed]**

**TABLE OF CONTENTS**

|  |    |
|--|----|
| Section 1. Authority.....  | 10 |
| Section 2. Purpose and Intent.....   | 10 |
| Section 3. Title .....   | 10 |
| Section 4. Jurisdiction.....   | 11 |
| Section 5. Applicability .....   | 11 |
| Section 6. Relation to Other Ordinances.....                                   | 11 |
| Section 7. Interpretation.....   | 11 |
| A.    Meaning and Intent .....   | 11 |
| B.    Text Controls in Event of Conflict. ....                                 | 11 |
| C.    Authority for Interpretation .....                                       | 11 |
| D.    References to Statutes, Regulations, and Documents.....                  | 11 |
| E.    Computation of Time.....   | 11 |
| F.    Delegation of Authority. ....  | 12 |
| G.    Usage.....   | 12 |
| Section 8. Riparian Area Protection within the Jordan Reservoir Watershed..... | 12 |
| A.    Buffers Protected.....   | 12 |
| B.    Exemption Based on On-site Determination .....                           | 13 |
| C.    Exemption when Existing Uses are Present and Ongoing .....               | 14 |
| D.    Zones of the Riparian Buffer .....                                       | 14 |

|   |    |
|---|----|
| E.    Diffuse Flow Requirements .....   | 15 |
| Section 9. Potential Uses and Associated Requirements .....                                   | 15 |
| A.    Approval for New Development .....  | 15 |
| B.    Table of Uses .....   | 16 |
| C.    Requirements for Categories of Uses .....   | 27 |
| Section 10. Permits Procedures, Requirements, and Approvals .....                             | 28 |
| A.    Determination of No Practical Alternatives / Request for Authorization Certificate..... | 28 |
| B.    Variances .....   | 29 |
| C.    Mitigation .....  | 30 |
| Section 11. Compliance and Enforcement .....  | 34 |
| A.    Site Inspections .....  | 34 |
| B.    Civil Penalties .....   | 35 |
| C.    Criminal Penalties .....  | 36 |
| D.    Injunctive Relief.....  | 36 |
| Section 12. Severability .....  | 37 |
| Section 13. Effective Date .....  | 37 |
| Section 14. Revisions to this Ordinance .....   | 37 |
| Section 15. Definitions .....   | 37 |

## **Section 1. Authority**

This Ordinance is adopted pursuant to the authority vested in City of Burlington, hereinafter referred to as the “City”, by the Session Laws and the General Statutes of North Carolina, particularly Session Law 2009-216 (House Bill 239), Session Law 2009-484 (Senate Bill 838), N.C. Gen. Stat §160A-174, 160A-193, Chapter 160A, Article 19, and any special legislation enacted by the General Assembly for the City.

## **Section 2. Purpose and Intent**

The purposes of the City of Burlington in adopting the following Ordinance is to protect and preserve existing riparian buffers throughout the Jordan Watershed as generally described in Rule 15A NCAC 02B .0262 (Jordan Water Supply Nutrient Strategy: Purpose and Scope), in order to maintain their nutrient removal and stream protection functions. Additionally this Ordinance will help protect the water supply uses of Jordan Reservoir and of designated water supplies throughout the Jordan watershed.

Buffers adjacent to streams provide multiple environmental protection and resource management benefits. Forested buffers enhance and protect the natural ecology of stream systems, as well as water quality through bank stabilization, shading, and nutrient removal. They also help to minimize flood damage in flood prone areas. Well-vegetated streamside riparian areas help to remove nitrogen and prevent sediment and sediment-bound pollutants such as phosphorous from reaching the streams.

## **Section 3. Title**

This Ordinance shall be known as the *City of Burlington Riparian Buffer Protection Ordinance* [for Lands within the Jordan Watershed].

#### **Section 4. Jurisdiction**

This Ordinance shall be applied to all land within the planning jurisdiction of the City of Burlington that is located within the Jordan Reservoir Watershed.

#### **Section 5. Applicability**

This Ordinance applies to all landowners and other persons conducting activities in the area described in Section 4, with the exception of activities conducted under the authority of the State, the United States, multiple jurisdictions, or local units of government, and forest harvesting and agricultural activities. The NC Division of Water Quality shall administer the requirements of Rule 15A NCAC 02B .0267 and .0268 (Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers and Mitigation of Existing Riparian Buffers, respectively) for these activities.

#### **Section 6. Relation to Other Ordinances**

The requirements of this Ordinance shall supersede all locally implemented buffer requirements stated in Rules 15A NCAC 02B .0214 through .0216 as applied to WS-II, WS-III, and WS-IV waters in the Jordan watershed. If the provisions of this ordinance otherwise conflict with the provisions of any other validly enforceable ordinance(s) or laws, the most stringent provisions shall control. This Ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule, regulation, or other provision of law.

#### **Section 7. Interpretation**

##### **A. Meaning and Intent**

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 2, Purpose and Intent. If a different or more specific meaning is given for a term defined elsewhere in the Code of Ordinances of the City of Burlington, North Carolina, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

##### **B. Text Controls in Event of Conflict.**

In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

##### **C. Authority for Interpretation**

The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.

##### **D. References to Statutes, Regulations, and Documents.**

Whenever reference is made to a resolution, ordinance, statute, regulation, manual, or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

##### **E. Computation of Time.**

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the City, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the City. References to days are calendar days unless otherwise stated.

F. Delegation of Authority.

Any act authorized by this Ordinance to be carried out by the Stormwater Administrator of the City of Burlington may be carried out by his or her designee.

G. Usage

(1) *Mandatory and Discretionary Terms.* The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may" and "should" are permissive in nature.

(2) *Conjunctions.* Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word "and" indicates that all connected items, conditions, provisions and events apply. The word "or" indicates that one or more of the connected items, conditions, provisions or events apply.

(3) *Tense, Plurals, and Gender.* Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

## **Section 8. Riparian Area Protection within the Jordan Reservoir Watershed**

A. Buffers Protected

The following minimum criteria shall be used for identifying regulated buffers:

1. This Ordinance shall apply to activities conducted within, or outside of with hydrologic impacts in violation of the diffuse flow requirements set out in Section 8.(E) upon, 50-foot wide riparian buffers directly adjacent to surface waters in the Jordan watershed (intermittent streams, perennial streams, lakes, reservoirs and ponds), excluding wetlands.
2. Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to Rules 15A NCAC 2B .0230 and .0231, Rules 15A NCAC 2H .0500, 15A NCAC 2H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.
3. For the purpose of this Ordinance, only one of the following types of maps shall be used for purposes of identifying a water body subject to the requirements of this ordinance:
  - a. The most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture.
  - b. The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS).
  - c. A map approved by the Geographic Information Coordinating Council and by the NC Environmental Management Commission. Prior to approving a map under this Item, the Commission shall provide a 30-day public notice and opportunity for comment. Alternative maps approved by the Commission shall not be used for buffer delineation on projects that are existing and ongoing within the meaning of Section 8.(C) of this Ordinance.

4. Where the specific origination point of a stream regulated under this Item is in question, upon request of the NC Division of Water Quality or another party, the Stormwater Administrator shall make an on-site determination. The Stormwater Administrator, or his designee, who has successfully completed the Division's *Surface Water Identification Training Certification* course, its successor, or other equivalent training curriculum approved by the Division, shall establish that point using the latest version of the Division publication, *Identification Methods for the Origins of Intermittent and Perennial Streams*, available at [http://h2o.enr.state.nc.us/ncwetlands/documents/NC\\_Stream\\_ID\\_Manual.pdf](http://h2o.enr.state.nc.us/ncwetlands/documents/NC_Stream_ID_Manual.pdf) or from the NC Division of Water Quality - 401 Oversight Express Permitting Unit, or its successor. The Stormwater Administrator may accept the results of a site assessment made by another party who meets these criteria. Any disputes over on-site determinations made according to this Item shall be referred to the Director of the Division of Water Quality c/o the 401 Oversight Express Permitting Unit, or its successor, in writing. The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.
5. Riparian buffers protected by this Ordinance shall be measured pursuant to Section 8.(D) of this Ordinance.
6. Parties subject to this Ordinance shall abide by all State rules and laws regarding waters of the state including but not limited to Rules 15A NCAC 2B .0230 and .0231, Rules 15A NCAC 2H .0500, 15A NCAC 2H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.
7. No new clearing, grading, or development shall take place nor shall any new building permits be issued in violation of this Ordinance.

B. Exemption Based on On-site Determination

When a landowner or other affected party including the Division believes that the maps have inaccurately depicted surface waters, he or she shall consult the Stormwater Administrator. Upon request, the Stormwater Administrator, or his designee, who has successfully completed the Division of Water Quality's *Surface Water Identification Training Certification* course, its successor, or other equivalent training curriculum approved by the Division, shall make an on-site determination. The Stormwater Administrator may also accept the results of site assessments made by other parties who have successfully completed such training. Any disputes over on-site determinations shall be referred to the Director of the Division of Water Quality c/o the 401 Oversight Express Permitting Unit, or its successor, in writing. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G.S. 150B. Surface waters that appear on the maps shall not be subject to these buffer requirements if a site evaluation reveals any of the following cases:

1. Man-made ponds and lakes that are not part of a natural drainage way that is classified in accordance with 15A NCAC 2B .0100, including ponds and lakes created for animal watering, irrigation, or other agricultural uses. (A pond or lake is part of a natural drainage way when it is fed by an intermittent or perennial stream or when it has a direct discharge point to an intermittent or perennial stream.)
2. Ephemeral streams.

3. The absence on the ground of a corresponding intermittent or perennial stream, lake, reservoir, or pond.
4. Ditches or other man-made water conveyances, other than modified natural streams.

C. Exemption when Existing Uses are Present and Ongoing

This Ordinance shall not apply to uses that are existing and ongoing; however, this Ordinance shall apply at the time an existing, ongoing use is changed to another use. Change of use shall involve the initiation of any activity that does not meet either of the following criteria for existing, ongoing activity:

1. It was present within the riparian buffer as of the effective date of this Ordinance and has continued to exist since that time. Existing uses shall include agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems, any of which involve either specific, periodic management of vegetation or displacement of vegetation by structures or regular activity. Only the portion of the riparian buffer occupied by the footprint of the existing use is exempt from this Ordinance. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within 50 feet of the surface water where it did not previously exist as of the effective date of this Ordinance, and existing diffuse flow is maintained. Grading and revegetating Zone Two is allowed provided that the health of the vegetation in Zone One is not compromised, the ground is stabilized and existing diffuse flow is maintained.
2. Projects or proposed development that are determined by the City to meet at least one of the following criteria:
  - a. Project requires a 401 Certification/404 Permit and these were issued prior to the effective date this Ordinance.
  - b. Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits and certifications prior to the effective date of this Ordinance;
  - c. Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by the effective date of this Ordinance; or
  - d. Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the City prior to the effective date of this Ordinance.
  - e. Projects that have a vested right per North Carolina General Statute §160A-385.1.

D. Zones of the Riparian Buffer

The protected riparian buffer shall have two zones as follows:

1. Zone One shall consist of a vegetated area that is undisturbed except for uses provided for in the Table of Uses, Section 9.(B) of this Ordinance. The location of Zone One shall be as follows:
  - a. For intermittent and perennial streams, Zone One shall begin at the top of the bank and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the top of the bank.
  - b. For ponds, lakes and reservoirs located within a natural drainage way, Zone One shall begin at the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the normal water level.
2. Zone Two shall consist of a stable, vegetated area that is undisturbed except for uses provided for in the Table of Uses, Section 9.(B) of this Ordinance. Grading and revegetating in Zone Two is allowed provided that the health of the vegetation in Zone One is not compromised. Zone Two shall begin at the outer edge of Zone One and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones One and Two shall be 50 feet on all sides of the surface water.

E. Diffuse Flow Requirements

Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow prior to its entry into the buffer and reestablishing vegetation as follows:

1. Concentrated runoff from new ditches or man-made conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone Two of the riparian buffer;
2. Periodic corrective action to restore diffuse flow shall be taken as necessary and shall be designed to impede the formation of erosion gullies; and
3. As set out in Sections 8.(D) and 9.(B) of this Ordinance, The Zones of the Riparian Buffer and Table of Uses respectively, no new stormwater conveyances are allowed through the buffers except for those specified in the Table of Uses, Section 9.(B) of this Ordinance, addressing stormwater management ponds, drainage ditches, roadside ditches, and stormwater conveyances.

## **Section 9. Potential Uses and Associated Requirements**

A. Approval for New Development

The Stormwater Administrator shall issue an approval for new development only if the development application proposes to avoid impacts to riparian buffers defined in Section 8.(A) of this Ordinance, or where the application proposes to impact such buffers, it demonstrates that the applicant has done the following, as applicable:

1. Determined the activity is exempt from requirements of this Ordinance;
2. Received an Authorization Certificate from the City pursuant to Section 10.A of this Ordinance;
3. For uses designated as Allowable with Mitigation in the Table of Uses in Section 9.(B), received approval of mitigation plan pursuant to Section 10.(C) of this Ordinance; and
4. Received a variance pursuant to Section 10.(B).

B. Table of Uses

The following chart sets out potential new uses within the buffer, or outside the buffer with impacts on the buffer, and categorizes them as exempt, allowable, or allowable with mitigation. All uses not categorized as exempt, allowable, or allowable with mitigation are considered prohibited and may not proceed within the riparian buffer or outside the buffer if the use would impact the buffer, unless a variance is granted pursuant to Section 10.(C) of this Ordinance, Variances. The requirements for each category are given in Section 9.(C) of this Section following the Table of Uses.

| Use  | Exempt<br>* | Allowable<br>* | Allowable<br>with<br>Mitigation* |
|--|-------------|----------------|----------------------------------|
| <p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> <li>• Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Ordinance and no impervious surface is added to the riparian buffer</li> <li>• Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Ordinance or impervious surface is added to the riparian buffer</li> </ul> | X           | X              |                                  |
| <p>Airport facilities:</p> <ul style="list-style-type: none"> <li>• Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer</li> <li>• Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer</li> <li>• Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips)<sup>1</sup></li> </ul>   |             | X<br><br>X     | X                                |
| Archaeological activities  | X           |                |                                  |
| Bridges  |             | X              |                                  |
| Canoe Access provided that installation and use does not result in removal of trees as defined in this Ordinance and no impervious surface is added to the buffer.   | X           |                |                                  |



| Use   | Exempt<br>* | Allowable<br>*    | Allowable<br>with<br>Mitigation* |
|---|-------------|-------------------|----------------------------------|
| <p>Dam maintenance activities:</p> <ul style="list-style-type: none"> <li>• Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3</li> <li>• Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No.3</li> </ul>  | X           | X                 |                                  |
| <p>Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers:</p> <ul style="list-style-type: none"> <li>• New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies.</li> <li>• Realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations.</li> <li>• New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nutrients and attenuate flow before the conveyance discharges through the riparian buffer</li> <li>• New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed.</li> </ul> | X           | <p>X</p> <p>X</p> | X                                |

| Use | Exempt<br>* | Allowable<br>* | Allowable<br>with<br>Mitigation* |
|-----|-------------|----------------|----------------------------------|
|-----|-------------|----------------|----------------------------------|

\* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 9.(C) of this Ordinance.

|   |   |   |   |
|---|---|---|---|
| <p>Driveway crossings of streams and other surface waters subject to this Ordinance:</p> <ul style="list-style-type: none"> <li>• Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer</li> <li>• Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer</li> <li>• In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer</li> <li>• In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer</li> </ul> | X | X | X |
| Driveway impacts other than crossing of a stream or other surface waters subject to this Ordinance  |   |   | X |
| <p>Fences:</p> <ul style="list-style-type: none"> <li>• Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in this Ordinance</li> <li>• Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Ordinance</li> </ul>   | X | X |   |
| Fertilizer application: one-time application to establish vegetation  | X |   |   |
| Grading and revegetation in Zone Two provided that diffuse flow and the health of existing vegetation in Zone One is not compromised and disturbed areas are stabilized until they are revegetated.   | X |   |   |

\* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 9.(C) of this Ordinance.

| Use  | Exempt<br>* | Allowable<br>* | Allowable<br>with<br>Mitigation* |
|--|-------------|----------------|----------------------------------|
| Greenway / hiking trails designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical.  |             | X              |                                  |
| Historic preservation  | X           |                |                                  |
| Maintenance access on modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.  |             | X              |                                  |
| Mining activities: <ul style="list-style-type: none"> <li>• Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Sections 8.(D) and 8.(E) of this Ordinance are established adjacent to the relocated channels</li> <li>• Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of Sections 8.(D) and 8.(E) of this Ordinance are not established adjacent to the relocated channels</li> <li>• Wastewater or mining dewatering wells with approved NPDES permit</li> </ul> | X           | X              | X                                |
| Playground equipment: <ul style="list-style-type: none"> <li>• Playground equipment on single family lots provided that installation and use does not result in removal of vegetation</li> <li>• Playground equipment installed on lands other than single-family lots or that requires removal of vegetation</li> </ul>   | X           | X              |                                  |

\* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 9.(C) of this Ordinance.

| Use   | Exempt<br>* | Allowable<br>* | Allowable<br>with<br>Mitigation* |
|---|-------------|----------------|----------------------------------|
| Ponds created by impounding streams and not used as stormwater BMPs: <ul style="list-style-type: none"> <li>• New ponds provided that a riparian buffer that meets the requirements of Sections 8.(D) and 8.(E) of this Ordinance is established adjacent to the pond</li> <li>• New ponds where a riparian buffer that meets the requirements of Sections 8.(D) and 8.(E) of this Ordinance is NOT established adjacent to the pond</li> </ul>   |             | X              | X                                |
| Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel   |             | X              |                                  |
| Railroad impacts other than crossings of streams and other surface waters subject to this Ordinance.  |             |                | X                                |
| Railroad crossings of streams and other surface waters subject to this Ordinance: <ul style="list-style-type: none"> <li>• Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer</li> <li>• Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer</li> <li>• Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer</li> </ul> | X           | X              | X                                |

\* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 9.(C) of this Ordinance.



| Use  | Exempt<br>* | Allowable<br>* | Allowable<br>with<br>Mitigation* |
|--|-------------|----------------|----------------------------------|
| Road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety: <ul style="list-style-type: none"> <li>• Less than or equal to 2,500 square feet of buffer impact</li> <li>• Greater than 2,500 square feet of buffer impact</li> </ul>   |             | X              | X                                |
| Stormwater BMPs: <ul style="list-style-type: none"> <li>• Wet detention, bioretention, and constructed wetlands in Zone Two if diffuse flow of discharge is provided into Zone One</li> <li>• Wet detention, bioretention, and constructed wetlands in Zone One</li> </ul>   |             | X              | X                                |
| Scientific studies and stream gauging  | X           |                |                                  |
| Streambank or shoreline stabilization  |             | X              |                                  |
| Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation: At the end of five years the restored buffer shall comply with the restoration criteria in Section 10.(C)(7) of this Ordinance: <ul style="list-style-type: none"> <li>• Less than or equal to 2,500 square feet of buffer disturbance</li> <li>• Greater than 2,500 square feet of buffer disturbance</li> <li>• Associated with culvert installation or bridge construction or replacement.</li> </ul> | X           | X<br><br>X     |                                  |

\* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 9.(C) of this Ordinance.

| Use  | Exempt<br>*       | Allowable<br>*    | Allowable<br>with<br>Mitigation* |
|--|-------------------|-------------------|----------------------------------|
| <p>Temporary sediment and erosion control devices, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria in Section 10.(C)(7) of this Ordinance:</p> <ul style="list-style-type: none"> <li>• In Zone Two provided ground cover is established within timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone One is not compromised, and runoff is released as diffuse flow in accordance with Section 8.(E) of this Ordinance.</li> <li>• In Zones one and two to control impacts associated with uses approved by City or that have received a variance, provided that sediment and erosion control for upland areas is addressed, to the maximum extent practical, outside the buffer.</li> <li>• In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act.</li> <li>• In-stream temporary erosion and sediment control measures for work within a stream channel.</li> </ul> | <p>X</p> <p>X</p> | <p>X</p> <p>X</p> |                                  |
| <p>Utility, electric, aerial, perpendicular crossings of streams and other surface waters subject to this Ordinance<sup>2,3,5</sup>:</p> <ul style="list-style-type: none"> <li>• Disturb equal to or less than 150 linear feet of riparian buffer</li> <li>• Disturb greater than 150 linear feet of riparian buffer</li> </ul>   | <p>X</p>          | <p>X</p>          |                                  |

\* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 9.(C) of this Ordinance.

| Use  | Exempt<br>* | Allowable<br>* | Allowable<br>with<br>Mitigation* |
|--|-------------|----------------|----------------------------------|
| Utility, electric, aerial, other than perpendicular crossings <sup>5</sup> :<br><ul style="list-style-type: none"> <li>Impacts in Zone Two</li> <li>Impacts in Zone One<sup>2,3</sup></li> </ul>   |             | X              | X                                |
| Utility, electric, underground, perpendicular crossings <sup>3,4,5</sup> :<br><ul style="list-style-type: none"> <li>Disturb less than or equal to 40 linear feet of riparian buffer</li> <li>Disturb greater than 40 linear feet of riparian buffer</li> </ul>  | X           | X              |                                  |
| Utility, electric, underground, other than perpendicular crossings <sup>4</sup> :<br><ul style="list-style-type: none"> <li>Impacts in Zone Two</li> <li>Impacts in Zone One<sup>1</sup></li> </ul>  | X<br>X      |                |                                  |
| Utility, non-electric, perpendicular crossings of streams and other surface waters subject to this Ordinance <sup>3,5</sup> :<br><ul style="list-style-type: none"> <li>Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width</li> <li>Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width</li> <li>Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width</li> <li>Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width</li> <li>Disturb greater than 150 linear feet of riparian buffer</li> </ul> | X           | X<br><br>X     | X<br><br>X                       |

\* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 9.(C) of this Ordinance.



| Use  | Exempt<br>* | Allowable<br>* | Allowable<br>with<br>Mitigation* |
|--|-------------|----------------|----------------------------------|
| Utility, non-electric, other than perpendicular crossings <sup>4,5</sup> ;   |             | X              | X                                |
| <ul style="list-style-type: none"> <li>Impacts in Zone Two</li> <li>Impacts in Zone One</li> </ul>   |             |                |                                  |
| Vegetation management:   |             |                |                                  |
| <ul style="list-style-type: none"> <li>Emergency fire control measures provided that topography is restored</li> </ul>   | X           |                |                                  |
| <ul style="list-style-type: none"> <li>Mowing or harvesting of plant products in Zone Two</li> </ul>   | X           |                |                                  |
| <ul style="list-style-type: none"> <li>Planting vegetation to enhance the riparian buffer</li> </ul>   | X           |                |                                  |
| <ul style="list-style-type: none"> <li>Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised</li> </ul>  | X           |                |                                  |
| <ul style="list-style-type: none"> <li>Removal of individual trees that are in danger of causing damage to dwellings, other structures or human life, or are imminently endangering stability of the streambank.</li> </ul>  | X           |                |                                  |
| <ul style="list-style-type: none"> <li>Removal of individual trees which are dead, diseased or damaged.</li> </ul>   | X           |                |                                  |
| <ul style="list-style-type: none"> <li>Removal of poison ivy</li> </ul>  | X           |                |                                  |
| <ul style="list-style-type: none"> <li>Removal of invasive exotic vegetation as defined in:<br/><i>Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30</i></li> </ul> | X           |                |                                  |
| <ul style="list-style-type: none"> <li>Vehicular access roads leading to water-dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water and have minimum practicable width not exceeding ten feet.</li> </ul>                   |             | X              |                                  |
| <ul style="list-style-type: none"> <li>Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use result in disturbance to riparian buffers.</li> </ul>  |             | X              |                                  |

\* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 9.(C) of this Ordinance.

| Use   | Exempt<br>* | Allowable<br>* | Allowable<br>with<br>Mitigation* |
|---|-------------|----------------|----------------------------------|
| Water supply reservoirs: <ul style="list-style-type: none"> <li>• New reservoirs where a riparian buffer that meets the requirements of Sections 8.(D) and 8.(E) of this Ordinance is established adjacent to the reservoir</li> <li>• New reservoirs where a riparian buffer that meets the requirements of Sections 8.(D) and 8.(E) of this Ordinance is not established adjacent to the reservoir</li> </ul>                                     |             | X              | X                                |
| Water wells <ul style="list-style-type: none"> <li>• Single family residential water wells</li> <li>• All other water wells</li> </ul>  | X           | X              |                                  |
| Wetland, stream and buffer restoration that results in impacts to the riparian buffers: <ul style="list-style-type: none"> <li>• Wetland, stream and buffer restoration that requires NC Division of Water Quality approval for the use of a 401 Water Quality Certification</li> <li>• Wetland, stream and buffer restoration that does not require Division of Water Quality approval for the use of a 401 Water Quality Certification</li> </ul> | X           | X              |                                  |
| Wildlife passage structures   |             | X              |                                  |

<sup>1</sup>Provided that:

- No heavy equipment is used in Zone One.
- Vegetation in undisturbed portions of the buffer is not compromised.
- Felled trees are removed by chain.
- No permanent felling of trees occurs in protected buffers or streams.
- Stumps are removed only by grinding.
- At the completion of the project the disturbed area is stabilized with native vegetation.
- Zones one and two meet the requirements of Sections 8.(D) and 8.(E)

<sup>2</sup>Provided that, in Zone One, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the City, as defined in Section 10.(A).

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.

- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Riprap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

<sup>3</sup>Provided that poles or aerial infrastructure shall not be installed within 10 feet of a water body unless the City completes a no practical alternative evaluation as defined in Section 10.(A).

<sup>4</sup>Provided that, in Zone One, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the City, as defined in Section 10.(A).

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Measures shall be taken upon completion of construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

<sup>5</sup>Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

#### C. Requirements for Categories of Uses

Uses designated in Section 9.(B) of this Section as exempt, allowable, and allowable with mitigation within a riparian buffer shall have the following requirements:

##### 1. Exempt.

Uses designated as exempt are permissible without authorization by the City provided that they adhere to the limitations of the activity as defined in Section 9.(B) of this Section, the Table of Uses. In addition, exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to

provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities.

2. Allowable.

Uses designated as allowable may proceed provided that there are no practical alternatives to the requested use pursuant to Section 10.(A) of this Section. This includes construction, monitoring, and maintenance activities. These uses require written authorization from the City.

3. Allowable with Mitigation.

Uses designated as allowable with mitigation may proceed provided that there are no practical alternatives to the requested use pursuant to Section 10.(A) of this Section and an appropriate mitigation strategy has been approved pursuant to Section 10.(C). These uses require written authorization from the City.

## **Section 10. Permits Procedures, Requirements, and Approvals**

### **A. Determination of No Practical Alternatives / Request for Authorization Certificate**

1. Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a “no practical alternatives” determination to the Stormwater Administrator. The applicant shall certify that the project meets all the following criteria for finding “no practical alternatives”:
  - a. The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
  - b. The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
  - c. Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
2. The applicant shall also submit at least the following information in support of their assertion of “no practical alternatives”:
  - a. The name, address and phone number of the applicant;
  - b. The nature of the activity to be conducted by the applicant;
  - c. The location of the activity, including the jurisdiction;
  - d. A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;
  - e. An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and
  - f. Plans for any best management practices proposed to be used to control the impacts associated with the activity.
3. Within 60 days of a submission that addresses Section 10.(A)(2) , the Stormwater Administrator shall review the entire project and make a finding of fact as to whether the criteria in Section 10.(A)(1) of this Section have been met. A finding of “no practical alternatives” shall result in issuance of an Authorization Certificate. Failure to act within 60 days shall be construed as a

finding of “no practical alternatives” and an Authorization Certificate shall be issued to the applicant unless one of the following occurs:

- a. The applicant agrees, in writing, to a longer period;
  - b. The Stormwater Administrator determines that the applicant has failed to furnish requested information necessary to the Stormwater Administrator’s decision;
  - c. The final decision is to be made pursuant to a public hearing; or
  - d. The applicant refuses access to its records or premises for the purpose of gathering information necessary to the Stormwater Administrator’s decision.
4. The Stormwater Administrator may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of this Ordinance.
  5. Any appeals of determinations regarding Authorization Certificates shall be referred to the Director of the Division of Water Quality, c/o the 401 Oversight Express Permitting Unit, or its successor. The Director’s decision is subject to review as provided in G.S. 150B Articles 3 and 4.

#### B. Variances

##### 1. Requirements for Variances.

Persons who wish to undertake prohibited uses may pursue a variance. The City Council may grant minor variances. For major variances, the Stormwater Administrator shall prepare preliminary findings and submit them to the Division of Water Quality, 401 Oversight Express Permitting Unit, or its successor for approval by the Environmental Management Commission. The variance request procedure shall be as follows:

- (a) For any variance request, the City Council shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:

If the applicant complies with the provisions of this Ordinance, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the City Council shall consider whether the variance is the minimum possible deviation from the terms of this Ordinance that shall make reasonable use of the property possible;

The hardship results from application of this Ordinance to the property rather than from other factors such as deed restrictions or other hardship;

The hardship is due to the physical nature of the applicant’s property, such as its size, shape, or topography, such that compliance with provisions of this ordinance would not allow reasonable use of the property;

The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;

The applicant did not purchase the property after the effective date of this Ordinance, and then request a variance; and

The hardship is rare or unique to the applicant's property.  
The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and this Ordinance and preserves its spirit; and

In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

2. Minor Variances

A minor variance request pertains to activities that will impact only Zone Two of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Section 10.(A)(1) through Section 10.(A)(3) by the City Council pursuant to G.S. 160A-Article 19. The City Council may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Request for appeals to decisions made by the City Council shall be made in writing to the Director of the Division of Water Quality c/o the 401 Oversight Express Permitting Unit, or its successor. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.

3. Major Variances

A major variance request pertains to activities that will impact any portion of Zone One or any portion of both Zones One and Two of the riparian buffer. If the City has determined that a major variance request meets the requirements in Section 9.(C)(3) through 10.(B)(1), then it shall prepare a preliminary finding and submit it to the NC Environmental Management Commission c/o the Division of Water Quality, 401 Oversight Express Permitting Unit, or its successor, for approval. Within 90 days after receipt by the City, the Commission shall review preliminary findings on major variance requests and take one of the following actions: approve, approve with conditions and stipulations, or deny the request. Appeals from a Commission decision on a major variance request are made on judicial review to Superior Court.

C. Mitigation

1. This item shall apply to persons who wish to impact a riparian buffer in the Jordan watershed when one of the following applies:
  - (b) A person has received an Authorization Certificate pursuant to Section 10.(A) of this Ordinance for a proposed use that is designated as "allowable with mitigation;" or
  - (c) A person has received a variance pursuant to Section 10.(B) of this Ordinance and is required to perform mitigation as a condition of a variance approval.
2. Issuance of the Mitigation Approval  
The Stormwater Administrator shall issue a mitigation approval upon determining that a proposal meets the requirements set out in this Ordinance. The approval shall identify at a minimum the option chosen, the required and proposed areas, and either the mitigation location or offset payment amount as applicable.
3. Options for Meeting the Mitigation Requirement  
The mitigation requirement may be met through one of the following options:
  - a. Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 02B .0269 (Jordan Water Supply

Nutrient Strategy: Riparian Buffer Mitigation Fees to the NC Ecosystem Enhancement Program) contingent upon acceptance of payments by the NC Ecosystem Enhancement Program, or to a private mitigation bank that complies with banking requirements of the US Army Corps of Engineers, currently set out at <http://www.saw.usace.army.mil/WETLANDS/Mitigation/mitbanks.html> or from the US Army Corps of Engineers, P.O. Box 1890, Wilmington, NC, 28402-1890, and the applicable trading criteria in Rule 15A NCAC 02B .0273;

- b. Donation of real property or of an interest in real property pursuant to Section 10.(C)(6) of this Ordinance; or
- c. Restoration or enhancement of a non-forested riparian buffer pursuant to the requirements of Section 10.(C)(7) of this Ordinance.

4. The Area of Mitigation

The Stormwater Administrator shall determine the required area of mitigation, which shall apply to all mitigation options identified in Section 10.(C)(3) of this Ordinance and as further specified in the requirements for each option set out in this Section, according to the following:

- a. The impacts in square feet to each zone of the riparian buffer shall be determined by the Stormwater Administrator by adding the following:
  - i. The area of the footprint of the use causing the impact to the riparian buffer;
  - ii. The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use; and
  - iii. The area of any ongoing maintenance corridors within the riparian buffer associated with the use.
- b. The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Section 10.(4)(a) of this Ordinance to each zone of the riparian buffer:
  - i. Impacts to Zone One of the riparian buffer shall be multiplied by three;
  - ii. Impacts to Zone Two of the riparian buffer shall be multiplied by one and one-half; and
  - iii. Impacts to wetlands within Zones One and Two of the riparian buffer that are subject to mitigation under 15A NCAC 2H .0506 shall comply with the mitigation ratios in 15A NCAC 2H .0506.

5. The Location of Mitigation

For any option chosen, the mitigation effort shall be located within the same subwatershed of the Jordan watershed, as defined in 15A NCAC 02B.0262, and the same distance from the Jordan Reservoir as the proposed impact, or closer to the Reservoir than the impact, and as close to the location of the impact as feasible. Alternatively, the applicant may propose mitigation anywhere within the same subwatershed of the Jordan watershed, as defined in 15A NCAC 02B.0262, provided that the mitigation proposal accounts for differences in delivery of nutrients to the affected arm of Jordan Reservoir resulting from differences between the locations of the buffer impact and mitigation. Additional location requirements for the property donation option are enumerated in Section 10.(C)(6)(c)(i) of this Ordinance.

6. Donation of Property

Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:

- a. The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 02B .0273. The value of the property interest shall be determined by an appraisal performed in accordance with Section 10.(C)(6)(d)(iv) of this Ordinance. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to 15A NCAC 02B .0273, the applicant shall pay the remaining balance due.
- b. The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.
- c. Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:
  - i. In addition to the location requirements of Section 10.(C)(5) of this Ordinance, the property shall be located within an area that is identified as a priority for restoration in, or is otherwise consistent with the goals of, the *Basinwide Wetlands and Riparian Restoration Plan for the Cape Fear River Basin* developed by NC Division of Water Quality pursuant to G.S. 143-214.10;
  - ii. The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration as defined in Section 10.(7)(d) of this Ordinance;
  - iii. The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;
  - iv. The size of the restorable riparian buffer on the property to be donated shall equal or exceed the area of mitigation responsibility determined pursuant to Section 10.(C)(4) of this Ordinance;
  - v. Restoration shall not require removal of man-made structures or infrastructure;
  - vi. The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;
  - vii. The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and transaction costs;
  - viii. The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended;
  - ix. The property shall not contain any hazardous substance or solid waste;
  - x. The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer



- connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations;
- xi. The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort; and
- xii. The property shall not have any encumbrances or conditions on the transfer of the property interests.
- d. At the expense of the applicant or donor, the following information shall be submitted to the City with any proposal for donations or dedications of interest in real property:
  - i. Documentation that the property meets the requirements laid out in Section 10.(C)(6)(c) of this Ordinance;
  - ii. US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements;
  - iii. A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609;
  - iv. A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734; and
  - v. A title certificate.
- 7. Riparian Buffer Restoration or Enhancement
 

Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:

  - a. The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:
    - i. The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Section 10.(C)(4) of this Ordinance; or
    - ii. The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Section 10.(C)(4) of this Ordinance;
  - b. The location of the riparian buffer restoration or enhancement shall comply with the requirements in Section 10.(C)(5) of this Ordinance;

- c. The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;
- d. Enhancement and restoration shall both have the objective of establishing a forested riparian buffer according to the requirements of this Item. Enhancement shall be distinguished from restoration based on existing buffer conditions. Where existing trees are sparse, that is greater than or equal to 100 trees per acre but less than 200 trees per acre, a buffer may be enhanced. Where existing woody vegetation is absent, that is less than 100 trees per acre, a buffer may be restored;
- e. The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of Section 10.(A) of this Ordinance. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the Stormwater Administrator. The restoration or enhancement plan shall contain the following:
  - i. A map of the proposed restoration or enhancement site;
  - ii. A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity;
  - iii. A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer;
  - iv. A fertilization plan; and
  - v. A schedule for implementation;
- f. Within one year after the Stormwater Administrator has approved the restoration or enhancement plan, the applicant shall present proof to the Stormwater Administrator that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of both the State's and the City's riparian buffer protection program;
- g. The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions; and
- h. The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

## **Section 11. Compliance and Enforcement**

### **A. Site Inspections**

1. Agents, officials, or other qualified persons authorized by the City may periodically inspect riparian buffers to ensure compliance with this ordinance.
2. Notice of the right to inspect shall be included in the letter of approval of each variance and buffer authorization.
3. Authority to Enter Property and Conduct Investigations and Inspections.

Authorized agents, officials or other qualified persons shall have the authority, upon presentation of proper credentials, to enter and inspect at reasonable times any

property, public or private, for the purpose of investigating and inspecting the site of any riparian buffer. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the City, including the Stormwater Administrator, while that person is inspecting or attempting to inspect a riparian buffer nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out their official duties. The Stormwater Administrator shall have the power to conduct such investigations as deemed reasonably necessary to carry out the duties as prescribed in this Ordinance.

4. Notice of Violation

- a. If it is determined that a person has failed to comply with the requirements of this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. 1A-1, rule 4. In the event service cannot be accomplished by registered or certified mail, it may be accomplished in any manner provided in rule (4)j of the North Carolina Rules of Civil Procedure.
- b. The notice shall specify the violation and inform the person of the actions that need to be taken to comply with this Ordinance, or rules or orders adopted pursuant to this Ordinance. The notice shall direct the person to correct the violation within a specified reasonable time. The notice shall inform the person that any person who violates or fails to act in accordance with any of the provisions of this Ordinance or rules or orders adopted or issued pursuant to this Ordinance is subject to the civil and criminal penalties and other enforcement actions as provided in this Ordinance.

5. Power to Require Statements

The City shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activities.

B. Civil Penalties

1. Assessment of Penalties

Any person who violates or fails to act in accordance with any of the provisions of this Ordinance or rules or orders adopted or issued pursuant to this Ordinance shall be subject to a civil penalty. A civil penalty for a violation may be assessed in an amount not to exceed ten thousand dollars (\$10,000) per day. If any violation for which a penalty may be assessed is continuous, a civil penalty may be assessed for each day of the violation in an amount not to exceed twenty-five thousand dollars (\$25,000) per day for as long as the violation occurs. Each day of a continuing violation shall constitute a separate violation under Section 11.(B)(1).

2. Notice of Civil Penalty Assessment

The Stormwater Administrator shall provide written notice of the civil penalty amount and the basis for the assessment to the person assessed. The notice of civil penalty assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within thirty (30) days after receipt of the notice of assessment by written demand for a hearing.

3. Hearing

A hearing on the civil penalty shall be conducted by the City Council within 45 days after the date the written demand for the hearing is received by the City.

4. Final Decision.

The City Council shall issue a final decision on the civil penalty within 20 days of the recommended decision. A copy of the final decision shall be served on the violator by any means authorized under G.S. 1A-1, Rule 4.

5. Appeal of Final Decision.

The decision of the City Council shall be subject to Superior Court review of the proceedings in the nature of certiorari. All Superior Court review of City Council decisions shall be performed by the Superior Court of Alamance County. Petition for review by the Superior Court of Alamance County shall be filed with the Clerk of Superior Court of Alamance County within 30 days after the latter of the following:

1. The decision of the City Council is filed; or
2. A written copy of the decision is delivered to any aggrieved party that has filed a written request for such copy with the City Council at the time of its hearing of the case.

6. Demand for Payment of Penalty

An assessment that is not contested is due when the violator is served with a notice of assessment. The civil penalty must be paid within 30 days or the assessment, if not appealed, or within 30 days after the conclusion of the administrative or judicial review of the assessment. If payment is not received within 30 days after demand for payment is made, the City may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due.

7. Use of Penalties

Civil penalties collected pursuant to this Ordinance shall be credited to the general fund of the City as nontax revenue.

C. Criminal Penalties

1. Any person who negligently, knowingly or willingly violates any provision of this Ordinance or rule or order adopted pursuant to this Ordinance, shall be subject to the provisions of G.S. 14-4.

D. Injunctive Relief

1. Civil Action in Superior Court

Whenever the governing body of the City has reasonable cause to believe that any person is violating or threatening to violate this Ordinance or any rule or order adopted or issued pursuant to this Ordinance, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the City for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Alamance County.

2. Order to Cease Violation

Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this

section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

**E. Compliance with Requirements**

Any person engaged in new activities as defined by this Ordinance who fails to meet the requirements of this Ordinance shall be deemed in violation of this Ordinance.

**Section 12. Severability**

If any one or more sections or portions thereof of this Ordinance are held to be invalid or unenforceable, all other sections and portions thereof shall nevertheless continue in full force and effect.

**Section 13. Effective Date**

This Ordinance will become effective upon approval by the NC Environmental Management Commission and adoption by the City of Burlington City Council.

**Section 14. Revisions to this Ordinance**

The City shall review any revisions to the Model Local Riparian Buffer Protection Ordinance made by the Environmental Management Commission and, within 60 days of receipt of the recommended revisions, submit draft amendments to the Commission for its consideration and comments. Within 90 days after receipt of the Commissions' comments, the City will incorporate amendments into this ordinance.

**Section 15. Definitions**

For the purpose of this Ordinance, these terms shall be defined as follows:

- A. 'Access Trails' means pedestrian trails constructed of pervious or impervious surfaces and related structures to access a surface water, including boardwalks, steps, rails, and signage.
- B. 'Airport Facilities' means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases 'air navigation facility', 'airport', or 'airport protection privileges' under G.S. 63-1; the definition of 'aeronautical facilities' in G.S. 63-79(1); the phrase 'airport facilities' as used in G.S. 159-48(b)(1); the phrase 'aeronautical facilities' as defined in G.S. 159-81 and G.S. 159-97; and the phrase 'airport facilities and improvements' as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any

combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of ‘airport facilities’:

1. Satellite parking facilities;
  2. Retail and commercial development outside of the terminal area, such as rental car facilities; and
  3. Other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority, in which case they are included in the definition of ‘airport facilities’.
- C. ‘Channel’ means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.
- D. ‘DBH’ means diameter at breast height of a tree measured at 4.5 feet above ground surface level.
- E. ‘Development’ means the same as defined in Rule 15A NCAC 2B .0202(23).
- F. ‘Ditch or canal’ means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.
- G. ‘Ephemeral stream’ means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.
- H. ‘Existing development’ means development, other than that associated with agricultural or forest management activities, that meets one of the following criteria:
1. It either is built or has established a vested right based on statutory or common law as interpreted by the courts, for projects that do not require a state permit, as of the effective date of either local new development stormwater programs implemented under Rule 15A NCAC 2B .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) or, for projects requiring a state permit, as of the applicable compliance date established in Rule 15A NCAC 2B .0271 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development), Items (5) and (6); or
  2. It occurs after the compliance date set out in Sub-Item (4)(d) of Rule .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) but does not result in a net increase in built-upon area.
- I. ‘Greenway / Hiking Trails’ means pedestrian trails constructed of pervious or impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the shoreline.
- J. ‘High Value Tree’ means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; or for hardwoods and wetland species, 16-inch DBH or greater or 24-inch or greater stump diameter.

- K. 'Intermittent stream' means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.
- L. 'Jordan nutrient strategy' or 'Jordan water supply nutrient strategy' means the set of Rules 15A NCAC 2B .0262 through .0273 and .0311(p).
- M. 'Jordan Reservoir' means the surface water impoundment operated by the US Army Corps of Engineers and named B. Everett Jordan Reservoir, as further delineated for purposes of the Jordan nutrient strategy in Rule 15A NCAC 2B .0262(4).
- N. 'Jordan watershed' means all lands and waters draining to B. Everett Jordan Reservoir.
- O. 'New Development' means any development project that does not meet the definition of existing development set out in this Ordinance.
- P. 'Perennial stream' means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
- Q. 'Perennial waterbody' means a natural or man-made basin, including lakes, ponds, and reservoirs, that stores surface water permanently at depths sufficient to preclude growth of rooted plants. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream).
- R. 'Shoreline stabilization' is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, riprap, or gabions, while providing bank stabilization, shall not be considered stream restoration.
- S. 'Stream restoration' is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. 'Referenced' or 'referenced reach' means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects.
- T. 'Stream' means a body of concentrated flowing water in a natural low area or natural channel on the land surface.
- U. 'Stump diameter' means the diameter of a tree measured at six inches above the ground surface level.
- V. 'Surface waters' means all waters of the state as defined in G.S. 143-212 except underground waters
- W. 'Tree' means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.

- X. 'Temporary road' means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culverts, pipes or water dependent structures, or to maintain public traffic during construction.

The foregoing ordinance was seconded by Councilmember Ross, and after full discussion, the same was voted upon and declared duly adopted, no amendments having been offered and consent having been given to place the same upon its immediate passage. Councilmembers voting in favor of the motion to adopt the foregoing ordinance were Wall, Huffman, Butler, Ross and Faucette.

#### NEW BUSINESS:

#### ITEM 5: ADOPTION OF COUNCIL CODE OF ETHICS

Mayor Wall announced that the City Council would consider adopting a code of ethics to guide actions by the governing board members in the performance of their official duties as board members.

City Clerk Terry stated that legislation was passed by the North Carolina General Assembly in July 2009 requiring board members to receive ethics training and to adopt a policy containing a code of ethics to guide actions by the governing board members in the performance of their official duties as members. She said each board must adopt its policy by January 1, 2011.

She explained that the code must address at least five key board member responsibilities. These responsibilities reflect concern for ethical principles as well as for the effects of the board members' decisions on others. The five areas to be addressed are as follows:

1. The need to obey all applicable laws regarding official
2. actions taken as a board member.
3. To uphold the integrity and independence of the board member's office.
4. To avoid impropriety in the exercise of the board member's official duties.
5. To faithfully perform the duties of the office.
6. The need to conduct the affairs of the Council in an open and public manner.

Ms. Terry stated that Burlington City Councilmembers had completed the required ethics training and the proposed policy below was before Council for discussion and passage.



Code of Ethics for the  
City Council of the  
City of Burlington, North Carolina

PREAMBLE

WHEREAS, the Constitution of the State of North Carolina, Article 1, Section 35, reminds us that a "frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty," and

WHEREAS, a spirit of honesty and forthrightness is reflected in North Carolina's state motto, *Esse quam videri*, "To be rather than to seem," and

WHEREAS, Section 160A-86 of the North Carolina General Statutes requires local governing boards to adopt a code of ethics, and

WHEREAS, as public officials we are charged with upholding the trust of the citizens of Burlington and with obeying the law.

NOW, THEREFORE, BE IT RESOLVED in recognition of our blessings and obligations as citizens of the State of North Carolina, and as public officials representing the citizens of the City of Burlington and acting pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, we, the City Council of the City of Burlington, North Carolina, do hereby adopt the following General Principles and Code of Ethics to guide the City Council in its lawful decision-making.

GENERAL PRINCIPLES UNDERLYING THE CODE OF ETHICS

- The stability and proper operation of democratic representative government depends upon public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people upon their elected officials.
- Governmental decisions and policy must be made and implemented through proper channels and processes of the governmental structure.  
Council members must be able to act in a manner that maintains their integrity and independence yet is responsive to the interests and needs of those they represent.
- Council members must always remain aware that at various times they play different roles:
  - As advocates, who strive to advance the legitimate needs of their citizens.

- As legislators, who balance the public interest and private rights in considering and enacting ordinances, orders and resolutions.
- As decision-makers, who arrive at fair and impartial quasi-judicial and administrative determinations.
- Council members must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.
- Council members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents. Each official must find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

## CODE OF ETHICS

The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for the City Council and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a council member's best judgment.

Section 1. Council members should obey all laws applicable to their official actions as members of the Council. Council members should be guided by the spirit as well as the letter of the law in whatever they do.

At the same time, Council members should feel free to assert policy positions and opinions without fear of reprisal from fellow council members or citizens. To declare that a council member is behaving unethically because one disagrees with that council member on a question of policy (and not because of the council member's behavior) is unfair, dishonest, irresponsible and itself unethical.

Council members should endeavor to keep up to date, through the city attorney and other sources, about new or ongoing legal or ethical issues they may face in their official positions. This education function is in addition to the day-to-day legal advice the Council may receive concerning specific situations that arise.

Section 2. Council members should act with integrity and independence from improper influence as they exercise the duties of their offices. Characteristics and behaviors consistent with this standard include the following:

- Adhering firmly to a code of sound values.

- Behaving consistently and with respect toward everyone with whom they interact.
- Exhibiting trustworthiness.
- Living as if they are on duty as elected officials regardless of where they are or what they are doing.
- Using their best independent judgment to pursue the common good as they see it, presenting their opinions to all in a reasonable, forthright, consistent manner.
- Remaining incorruptible, self-governing, and unaffected by improper influence while at the same time being able to consider the opinions and ideas of others.
- Disclosing contracts and information about issues that they receive outside of public meetings and refraining from seeking or receiving information about quasi-judicial matters outside of the quasi-judicial proceedings themselves.
- Treating other council members and the public with respect and honoring the opinions of others even when the council members disagree with those opinions.
- Not reaching conclusions on issues until all sides have been heard.
- Showing respect for their offices and not behaving in ways that reflect badly on those offices.
- Recognizing that they are part of a larger group and acting accordingly.
- Recognizing that individual council members are not generally allowed to act on behalf of the council but may only do so if the council specifically authorizes it, and the council must take official action as a body.

Section 3.a. Council members should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach. Although opinions may vary about what behavior is inappropriate, this council will consider impropriety in terms of whether a reasonable person who is aware of all the relevant facts and circumstances surrounding the council member's action would conclude that the action was inappropriate.

Section 3.b. If a council member believes that his or her actions, while legal and ethical, may be misunderstood, the members should seek the advice of the city attorney and should

consider publicly disclosing the facts of the situation and the steps taken to resolve it (such as consulting with the attorney).

Section 4. Council members should faithfully perform the duties of their offices. They should act as the especially responsible citizens whom others can trust and respect. They should set a good example for others in the community, keeping in mind that trust and respect must continually be earned.

Council members should faithfully attend and prepare for meetings. They should carefully analyze all credible information properly submitted to them, mindful of the need not to engage in communications outside the meeting in quasi-judicial matters. They should demand full accountability from those over whom the council has authority.

Council members should be willing to bear their fair share of the council's workload. To the extent appropriate, they should be willing to put the council's interests ahead of their own.

Section 5. Council members should conduct the affairs of the Council in an open and public manner. They should comply with all applicable laws governing open meetings and public records, recognizing that doing so is an important way to be worthy of the public's trust. They should remember when they meet that they are conducting the public's business. They should also remember that local government records belong to the public and not to council members or their employees.

In order to ensure strict compliance with the laws concerning openness, council members should make clear that an environment of transparency and candor is to be maintained at all times in the governmental unit. They should prohibit unjustified delay in fulfilling public records requests. They should take deliberate steps to make certain that any closed sessions held by the council are lawfully conducted and that such sessions do not stray from the purposes for which they are called.

Upon motion by Mayor Pro Tem Huffman, seconded by Councilmember Ross, it was resolved to approve the Code of Ethics.

#### ITEM 6: PROPOSED 2011 FEES AND CHARGES SCHEDULE

Mayor Wall announced that the City Council would consider approving the proposed Fees and Charges Schedule to be effective January 1, 2011, with the exception of Indian Valley Golf Course to be effective November 22, 2010.

Upon motion by Mayor Pro Tem Huffman, seconded by Councilmember Butler, it was resolved unanimously to approve the following changes to the 2011 fee schedule:

| CITY OF BURLINGTON RECREATION FEE SCHEDULE   |  |                                      |  |
|--|--|--------------------------------------|--|
|  |  |                                      |  |
| RENTAL FEES ARE BASED UPON FIVE HOURS FROM 11:00-4:00PM OR FROM 5:00PM-10:00 PM-FOR FACILITIES RENTED                    |  |                                      |  |
| TWICE DAILY. RENTAL FEES ARE BASED UPON FIVE HOURS SCATTERED-FOR FACILITIES RENTED TWICE DAILY-RENTAL                    |  |                                      |  |
| FEES INCLUDE SUPERVISOR'S FEE  |  |                                      |  |
| For all recognized City holidays, all supervisory fees shall be doubled. \$40.00   |  |                                      |  |
|  |  | Calendar Year 2011 Fee For Residents | Calendar Year 2011 Fee For Non-Residents |
|  |  |                                      |  |
| SHELTERS/BUILDINGS/PARKS/GYMS  |  |                                      |  |
| All building reservations where a supervisor is required will be charged an additional \$20.00 per hour supervisory fee. |  |                                      |  |
| <b>City Park</b>   |  |                                      |  |
| Civitan Shelter-Open Shelter   |  | \$35.00 Weekends Only                | \$70.00 Weekends Only                    |
|  |  | \$ 20.00 Weekdays                    | \$ 40.00 Weekdays                        |
| Kiwanis Shelter-Open Shelter   |  | \$25.00 Weekends Only                | \$50.00 Weekends Only                    |
|  |  | \$ 16.00 Weekdays                    | \$ 32.00 Weekdays                        |
| TJ Sports Shelter-Open Shelter   |  | \$60.00 Weekends only                | \$120.00 Weekends only                   |
|  |  | \$25.00 Weekdays                     | \$50.00 Weekdays                         |
| Women's Div. of the Chamber Shelter-Open Shelter   |  | \$35.00 Weekends only                | \$70.00 Weekends only                    |
|  |  | \$20.00 Weekdays                     | \$40.00 Weekdays                         |
| Mayco Bigelow Activity Room  |  | \$100+\$100 facility deposit         | \$200+\$100 facility deposit             |
| <b>Davidson Park</b>   |  |                                      |  |
| Davidson Park Shelter-Open Shelter   |  | \$60.00 Weekends only                | \$120.00 Weekends only                   |
|  |  | \$25.00 Weekdays                     | \$50.00 Weekdays                         |
| <b>Springwood Park</b>   |  |                                      |  |
| Burlington Woman's Club-Open Shelter   |  | \$60.00 Weekends only                | \$120.00 Weekends only                   |
|  |  | \$25.00 Weekdays                     | \$50.00 Weekdays                         |
| Ala.County Women of the Chamber-Open Shelter   |  | \$60.00 Weekends only                | \$120.00 Weekends only                   |
|  |  | \$25.00 Weekdays                     | \$50.00 Weekdays                         |
| <b>John Robert Kernodle Sr. Center</b>   |  |                                      |  |
| 5 hour increments  |  |                                      |  |
|  |  |                                      |  |

|   |                   |  |          |
|---|-------------------|--|----------|
| <b>CAMPS &amp; AFTERSCHOOLS</b>   |                   |  |          |
| <b>Summer Day Camp Session Fees</b>   |                   |  |          |
| Summer Camp fees are based on a per session fee. There are three sessions each summer that parents may register their children for. Each session consists of 3 weeks. |                   |  |          |
| <b>Per Session Fee</b>  |                   |  |          |
| 1st Child   |                   | \$170.00   | \$220.00 |
| 2nd Child   |                   | \$160.00   | \$210.00 |
| 3rd Child   |                   | \$150.00   | \$200.00 |
| All payments must be made in full at the time of registration before a camper can attend camp for that session.   |                   |  |          |
| <b>Year Round/Week Long Breaks/Fundays</b>  |                   |  |          |
| Weekly Rate   |                   |  |          |
| 1st Child   |                   | \$60.00 (flat fee)                                     |          |
| 2nd Child   |                   | \$50.00 (flat fee)                                     |          |
| 3rd Child   |                   | \$40.00 (flat fee)                                     |          |
| <b>Daily Drop-In Rate-Full Day Program</b>  |                   |  |          |
| 1st Child   |                   | \$16.00 (flat fee)                                     |          |
| 2nd Child   |                   | \$12.00 (flat fee)                                     |          |
| 3rd Child   |                   | \$10.00 (flat fee)                                     |          |
| <b>AFTERSCHOOL PROGRAM ( Monthly Rates)</b>   |                   |  |          |
| 1 Child Fulltime Rate   |                   | \$136.00   |          |
| 2nd Child Fulltime Rate   |                   | \$120.00   |          |
| 3rd Child Fulltime Rate   |                   | \$80.00  |          |
| Part-time Rate for 1 child  |                   | \$83.00  |          |
| Part-time Rate for 2nd child  |                   | \$70.00  |          |
| Part-time Rate for 3rd child  |                   | \$60.00  |          |
| Drop-in rate  |                   | 1st Child \$16.00, 2nd-\$12.00, 3rd-\$10.00 (flat fee) |          |
| Late fee of \$10.00 will be charged after the 10th of the month.  |                   |  |          |
| <b>Wee School</b>   |                   |  |          |
|   | Monthly-Full Time | 1st Child \$140, 2nd Child \$130, 3rd Child \$120      |          |
|   | Monthly-Part Time | 1st Child \$90, 2nd Child \$80, 3rd Child \$70         |          |
| <b>Wee School Lunch Bunch-12noon-3pm</b>  |                   |  |          |
| Monthly Fee   |                   | \$30.00 (flat fee)                                     |          |
| <b>Wee School Lil'Sprouts Fee-3pm-6pm</b>   |                   |  |          |
| Monthly Fee   |                   | \$30.00 (flat fee)                                     |          |
| <b>ATHLETIC FEES</b>  |                   |  |          |

|   |  |  |  |
|---|--|--|--|
| <b>ADULT ATHLETIC FEES</b>                                |  |  |  |
| Adult Church Basketball League                            |  | \$23.00 per person                             | \$46.00 per person                             |
| Adult Basketball League                                   |  | \$36.00 per person                             | \$62.00 per person                             |
| Fall Adult Softball League                                |  | \$27.00 per person                             | \$50.00 per person                             |
| Spring Adult Softball League                              |  | \$36.00 per person                             | \$62.00 per person                             |
| Spring Co-Ed Softball League/One Night League             |  | \$23.00 per person                             | \$46.00 per person                             |
| Fall Co-Ed Softball League/One Night League               |  | \$16.00 per person                             | \$32.00 per person                             |
| Adult Soccer (Per Player Fee)                             |  | \$31.00  | \$62.00  |
|   |  |  |  |
| <b>YOUTH ATHLETIC FEES</b>                                |  |  |  |
| Soccer  |  | \$20.00  | \$75.00  |
| Baseball & Softball                                       |  | \$20.00  | \$75.00  |
| Basketball  |  | \$20.00  | \$75.00  |
| Lacrosse  |  | \$20.00  | \$75.00  |
| Flag Football   |  | \$20.00  | \$75.00  |
| Registration Fees After Sign-up Dates                     |  | \$27.00  | \$95.00  |
| Discounts for more than one child in immediate family     |  | 1st child \$20, 2nd child \$16, 3rd child \$14 | 1st child \$75, 2nd child \$71, 3rd child \$69 |
|   |  |  |  |
| <b><u>Paddle Boat Group Rental (5 or more)</u></b>        |  |  |  |
| Per 1/2 hour  |  | \$2.00   |  |
| Per Hour  |  | \$3.00   |  |
|   |  |  |  |
| <b>INDIAN VALLEY GOLF COURSE</b>                          |  |  |  |
| <b>Weekend &amp; Holiday</b>                              |  |  |  |
| Cart/Green Fee  |  | \$35.00  |  |
| Cart/Green Fee Twilight                                   |  | \$30.00  |  |
|   |  |  |  |
| 9-Hole Cart/Green Fee Twilight                            |  | \$20.00  |  |
| Walk  |  | \$25.00  |  |
| Walk Twilight   |  | \$20.00  |  |
|   |  |  |  |
| <b>Weekday</b>  |  |  |  |
| Cart/Green Fee  |  | \$27.00  |  |
| Cart/Green Fee Twilight                                   |  | \$22.00  |  |
| Cart/Green Fee-Senior, Junior, Students, Totally Disabled |  | \$18.00  |  |
| Cart/Green Fee Twilight                                   |  | \$15.00  |  |
| Walk  |  | \$16.00  |  |
| Walk Twilight   |  | \$12.00  |  |
| Walk Senior, Junior, Student, Totally Disabled            |  | \$15.00  |  |

|   |  |                           |            |
|---|--|---------------------------|------------|
|   |  |                           |            |
| Ride Member Cart Member, Replay   |  | \$12.00                   |            |
| Ride Member 9 Holes   |  | \$6.00                    |            |
| Driving Range Rate  |  | \$5.00-large/\$3.00-small |            |
|   |  |                           |            |
| <b>Annual Green Fees</b>  |  |                           |            |
| Alamance County Individual Pass   |  |                           |            |
| Alamance County Family Pass   |  |                           |            |
|   |  |                           |            |
| <b>Annual Weekday Green Fees</b>  |  |                           |            |
| Alamance County Individual  |  | \$500.00                  |            |
|   |  |                           |            |
| <b>JUNIOR ANNUAL GREEN FEE</b>  |  | \$120.00                  |            |
|   |  |                           |            |
| <b>Senior 7 Round Bonus Card</b>  |  | \$100.00                  |            |
|   |  |                           |            |
| ANNUAL GREENS FEES ARE NOT APPLICABLE WHEN-   |  |                           |            |
| EVER THE GOLF COURSE IS RENTED BY AN OUTSIDE  |  |                           |            |
| CONCERN, AND. THEREFORE, CLOSED TO NON-   |  |                           |            |
| TOURNAMENT PLAY. (Ex. "shot-gun" starts)  |  |                           |            |
| NO RAIN CHECKS ISSUED FOR ANY DISCOUNTED  |  |                           |            |
| GREENS FEE.   |  |                           |            |
| University/College Golf July 1-June 30  |  | \$1,000.00                |            |
| Middle and High Schools - Annual Fee -for 3 months  |  | \$300.00                  |            |
| Special Tournament rates(everyone must ride): Weekday Tournament pre-booked, 12 or more players, single payment, am or pm shotgun possible(72 players min.): \$2.00 off ( <b>Delete "Combo Special"</b> ) rate. Weekend Tournament(non-peak): pre-booked, 12-100 or more players, |  |                           |            |
|   |  |                           |            |
|   |  |                           |            |
| Exclusive Course Use  |  |                           | \$3,000.00 |
| <b><u>Birthday Party Package</u></b>  |  |                           |            |
| 10 children or less = \$65.00, more than 10 children \$4.00 for each additional child with reservation of the Gazebos.  |  |                           |            |
|   |  |                           |            |
| Maximum capacity for gazebo is 15 people. If adult participation exceeds four, additional ride passes need to be purchased at \$2.00 per person.  |  |                           |            |
|   |  |                           |            |
| <b>LARGE OUTDOOR EVENTS - CORPORATE, CIVIC/NON-PROFIT, FAMILY REUNIONS, CHURCH EVENTS, WEDDINGS</b>   |  |                           |            |
| Staff fee of \$20/person/hr. based on # of attendees for  |  |                           |            |
| all groups will be charged. Staff will determine staffing requirements.   |  |                           |            |
|   |  |                           |            |



|   |  |                                    |  |
|---|--|------------------------------------|--|
|   |  |                                    |  |
| <b>PARAMOUNT THEATER</b>                          |  |                                    |  |
| Load - in Dates (Normal load-in 1pm-11pm)         |  |                                    |  |
| Non-Profit Weekly User ( for 10 hour usage)       |  | \$180.00/ten hours                 |  |
| Each additional hour over 10 hours                |  | \$35.00                            |  |
| Non-Profit Daily User (per hour)                  |  | \$55.00                            |  |
|   |  |                                    |  |
| <b><u>Rehearsal Dates</u></b>                     |  |                                    |  |
| Non- Profit Weekly User                           |  | \$150.00 per 4 hours               |  |
| Each additional hour over 4                       |  | \$55.00                            |  |
| Non-Profit Daily User                             |  | \$65.00 per hour                   |  |
|   |  |                                    |  |
| <b><u>Performance Dates (Monday-Thursday)</u></b> |  |                                    |  |
| Non-Profit Weekly User ( for 4 hour usage)        |  | \$180.00                           |  |
| Each additional hour over 4                       |  | \$65.00                            |  |
| Non-Profit Daily User                             |  | \$365.00                           |  |
| Each additional hour over 4                       |  | \$130.00                           |  |
|   |  |                                    |  |
| <b><u>Performance Dates ( Friday-Sunday)</u></b>  |  |                                    |  |
| Non-Profit Weekly User                            |  | \$220.00 per 4 hours               |  |
| Each additional hour over 4                       |  | \$90.00                            |  |
| Non-Profit Daily User                             |  | \$400.00                           |  |
| Each additional hour over 4                       |  | \$150.00                           |  |
|   |  |                                    |  |
| <b><u>"Strike"</u></b>                            |  |                                    |  |
| Non-Profit Weekly User                            |  | \$55.00 per hour after final event |  |
| Next day up to 4 hours                            |  | \$200.00                           |  |
| Non-Profit Daily User                             |  | \$50.00 per hour                   |  |
| Next day up to 4 hours                            |  | \$180.00                           |  |
|   |  |                                    |  |
| <b><u>"Front of Curtain"</u></b>                  |  |                                    |  |
| Non-Profit "Front of Curtain" User                |  |                                    |  |
| Monday - Thursday                                 |  | \$80.00 per hour                   |  |
| Friday, Saturday and Sunday                       |  | \$130.00 per hour                  |  |
|   |  |                                    |  |
| <b><u>"Front of Curtain"</u></b>                  |  |                                    |  |
| <b><u>Private/Profit User</u></b>                 |  |                                    |  |
| Monday - Thursday                                 |  | \$110.00 per hour                  |  |
| Friday - Sunday                                   |  | \$180.00 per hour                  |  |
|   |  |                                    |  |
| <b><u>Full Stage Event</u></b>                    |  |                                    |  |
| Monday-Thursday                                   |  | \$550.00 per day                   |  |

|   |  |                                |                            |
|---|--|--------------------------------|----------------------------|
| Friday - Sunday   |  | \$660.00 per day               |                            |
|   |  |                                |                            |
| <u>Lobby Rental - available only during non-performance hours</u>   |  |                                |                            |
| Non-Profit (Monday-Thursday)  |  | \$55.00 per hour up to 4 hours |                            |
| Each hour after 4   |  | \$45.00                        |                            |
| Non-Profit (Friday-Sunday)  |  | \$70.00 per hour up to 4 hours |                            |
| Each hour after 4   |  | \$55.00                        |                            |
| Private/Profit (Monday Thursday)  |  | \$110.00 per hour              |                            |
| Private/Profit (Friday-Sunday)  |  | \$150.00 per hour              |                            |
| <b>Orchestra pit coverage</b>   |  | \$135.00                       |                            |
|   |  |                                |                            |
| Daily user facility maintenance deposit   |  | \$150.00                       |                            |
| for any receptions and food related events  |  |                                |                            |
|   |  |                                |                            |
| Maintenance Fee for Food Events   |  | \$125.00                       |                            |
|   |  |                                |                            |
| <b>Christmas Parade Fees</b>  |  |                                |                            |
| <b>Professional Floats</b>  |  |                                |                            |
| Full Float  |  | \$600.00                       |                            |
| 1/2 Shared Float  |  | \$350.00                       |                            |
|   |  |                                |                            |
| <b>Non-Professional Floats &amp; Units That Advertise Commercial Business</b>                             |  |                                | \$225.00                   |
| <b>Horses-per horse, limited 6 per/owner, max of 50 entries</b>   |  |                                | \$15.00                    |
| <b>Non-Professional Floats &amp; Units that are Non-Profit &amp; Do Not Advertise Commercial Business</b> |  |                                | NO FEE                     |
| <b>Walking Units (Commercial Business)</b>  |  |                                | \$225.00                   |
| <b>Antique Vehicles &amp; Motorcycles (each vehicle must be at least 35 years old)</b>                    |  |                                | NO FEE                     |
|   |  |                                |                            |
|   |  |                                | <b>Fee changes in gray</b> |

## FIRE DEPARTMENT 2011 FEE SCHEDULE

| DESCRIPTION  | 2011<br>FEE               |
|--------------|---------------------------|
| Fire Reports | \$ .10/page over 20 pages |

## WATER RESOURCES 2011 FEE SCHEDULE

2011

| DESCRIPTION                                  | FEE                   |
|--|-----------------------|
| <b>WATER TAP FEES:</b>                       | INSIDE/OUTSIDE        |
| <b>SINGLE FAMILY RESIDENTIAL</b>             |                       |
| Installed price                              |                       |
| 1" TAP with 5/8" X 3/4" meter with backflow  | \$1300.00 / \$2600.00 |
| 1" Tap with 1" meter without backflow device | \$1450.00 / \$2900.00 |

|  |                       |
|--|-----------------------|
| <b>IRRIGATION &amp; SPRINKLER:</b>           |                       |
| <b>SINGLE FAMILY RESIDENTIAL</b>             |                       |
| Contractor installation price not included   |                       |
| 5/8" X 3/4" TAP and meter without backflow   | \$1300.00 / \$2600.00 |
| 1" Tap with 1" meter without backflow device | \$1450.00 / \$2900.00 |

|                                  |                       |
|----------------------------------|-----------------------|
| <b>SEWER TAP FEES</b>            |                       |
| <b>SINGLE FAMILY RESIDENTIAL</b> |                       |
| 4" TAP                           | \$1300.00 / \$2600.00 |

|                               |                       |
|-------------------------------|-----------------------|
| <b>FEES FOR 4" SEWER TAP:</b> |                       |
|                               |                       |
| RELOCATE 4" SEWER TAP         | \$1300.00 / \$2600.00 |

#### **ITEM 7: WATER SERVICE – CARRIAGE WAY SUBDIVISION**

Mayor Wall announced that the City Council would consider approving Carriage Way Subdivision water service.

Utilities Director Bob Patterson explained that Carriage Way Subdivision was developed in Guilford County in the late 1990's and early 2000's and that it was located outside of the current City limits adjacent to an undeveloped portion of the Mackintosh on the Lake Subdivision. He stated that at the time of the development of the subdivision, the City did not have water lines serving the area, and the developer planned to develop the subdivision with individual wells and septic tanks serving each lot. He explained that there were problems with locating adequate well sites for each lot and eventually a system of three off-site community wells, each serving multiple homes was established. Mr. Patterson stated that water quality issues emerged with the wells, primarily a high mineral content and that although there were no reported bacteriological issues with the wells, residents were concerned with the highly discolored water

as well as the reliability of the community well system. He said that reportedly one of the pumps went bad so the system was reconfigured so that two wells served the subdivision rather than the original three wells and that six to eight properties did drill their own, individual wells and removed themselves from the community system.

Mr. Patterson reported that as the City grew westward, some Carriage Way residents requested to receive water service from Burlington. He said that in 2005 the City Council approved selling water to a third party utility service via a master meter as long as certain conditions were met, namely the residents would pay the appropriate assessment fees, the installation of the master meter and associated equipment, and all property owners in the subdivision would sign a waiver stating they would not object to future annexation. He explained that the developer actually paid to extend the water main to the subdivision and to install the meter vault and backflow prevention device; however, not all of the property owners would sign the annexation waiver - essentially those who drilled their own wells and did not need water service - so the project stalled.

Mr. Patterson stated that quality issues continued periodically and residents claimed they were afraid to drink and use the water from the community wells. He said that residents continued their quest for help with obtaining better water and contacted the Public Water Supply Section of NCDENR. He said that earlier this year several meetings were held between City staff and representatives from Public Water Supply, and the Guilford County Planning and Public Health Departments to identify possible solutions to their problems.

Mr. Patterson stated that the Public Water Supply staff had determined that the areas of the subdivision served by the community wells (along the street called Carriage Way, Inglewood Road, and Elmdale Road north of its intersection with Ingle Dairy Road) most likely qualify for funding of water line installation as a disadvantaged community because of the ongoing water quality and pump reliability issues and the lack of technical and managerial expertise regarding the community well system. He said it was suggested that Guilford County act as the lead agency to administer a principle forgiveness loan - essentially a grant - to provide public water service to the Carriage Way Subdivision. Under this scenario, the loan would fund the installation of water lines meeting the City's Engineering Design Standards within the subdivision with individual taps at each lot to be served. The line would be turned over to the City for

maintenance and the residents would be City of Burlington water customers and charged standard outside rates.

Mr. Patterson explained that since the water line on Inglewood Road and Elmdale Road could be extended to serve additional areas, the Water Resources and Engineering Departments recommend that the line be sized to meet future service requirements. He explained the funding would not cover the upsizing of the line, which would be the City's only anticipated cost in this project. He stated that the Engineering Department's current estimate for the construction of the lines needed to serve the subdivision was approximately \$160,000, and the estimate to upsize the line was approximately \$50,000.

He said that the Guilford County Planning Department would present this project to the Guilford County Commissioners in December in order to proceed with application for funding to the Public Water Supply Section. City staff has been requested to ask the Council's approval of the following:

- 1) City Council affirms that the City of Burlington is willing to provide water service to the Carriage Way Subdivision in Guilford County.
- 2) All residents of the Carriage Way Subdivision are eligible to receive water service. Those residents who request to receive service must waive any objections to future annexation.
- 3) Those connecting to the water line must pay to the City the prevailing acreage fee and meter setting fees at the time of request for service.
- 4) Carriage Way residents would pay outside the City limits, double water rates and be treated in the same manner as other outside customers.
- 5) The City will not be responsible for costs for the water line design and construction, except that of over-sizing the water lines to supply future development in areas beyond Carriage Way Subdivision according to the City's long-range planning. Since the principle forgiveness loan will not pay for over-sizing the water main, the City will agree to pay the cost of over-sizing to Guilford County. These costs will be established based on contract unit prices and the footage of pipe installed.

Councilmember Butler stated that approving this request would create another "doughnut hole" similar to those that have created problems with the current proposed annexations.

Mayor Pro Tem Huffman said that the City had tried to provide water for outside customers who would sign a waiver stating they would come into the City at the City's request but that process had resulted in problems.

Mayor Wall stated Council would create problems similar to the ones it was attempting to correct.

Mayor Pro Tem Huffman said that some of the residents of the Carriage Way Subdivision previously did not want to sign the waiver.

Councilmember Butler said he was sympathetic with the water problems and that it was a feasible project but that to be good stewards for the citizens of Burlington, members of the community should be required to be annexed into the City. He said that the situation was unfortunate but to have access to the City's goods and services, residents need to be in the City.

City Manager Owen reiterated that Council was saying that the entire subdivision would have to be in agreement to be annexed before the City would sign this agreement.

City Attorney Bob Ward requested that the document be recorded by way of an agreement and run with the property.

City Manager Owen asked if the residents were annexed would the City be required to also provide sewer, and Mr. Ward said not for a voluntary annexation. Mr. Owen reiterated that this agreement would apply to water only.

City Attorney Ward said that what should occur would be that the petition would be attached to the agreement that would be recorded which would clearly state that it would run with the property. He said a title search would show that the predecessor had agreed to come into the City.

Council was in agreement that the entire Carriage Way Subdivision would have to agree to be annexed before the agreement could be signed.

#### ITEM 8: HOLIDAY MAGIC DOWNTOWN - DECEMBER 10, 2010

Mayor Wall announced that City Council would consider temporarily closing the following streets on Friday, December 10, 2010, for the Holiday Magic Downtown event:

3:00-9:00 PM - Front Street from Lexington to Worth Street  
5:30-9:00 PM - Davis Street from Spring Street to Worth  
Street  
5:30-9:00 PM - Spring Street from Davis Street to Front  
Street  
5:30-9:00 PM - Main Street from Davis Street to Front Street  
5:30-9:00 PM - Worth Street from Davis Street to Front Street

Special Events Supervisor Mary Faucette stated staff had met with merchants in the Downtown district. She asked for Council's approval to have a ceremony on December 10 and invited them to attend. She stated the lighting of the tree would be prior to the Christmas parade.

Council said December 10, 2010, would be fine especially since it was closer to Christmas.

Upon motion by Mayor Pro Tem Huffman, seconded by Councilmember Ross, it was resolved unanimously to approve the foregoing street closings on December 10, 2010.

#### STAFF REPORT: RE-ACCREDITATION ON-SITE PROCESS

Police Chief Mike Williams gave the following report on the Re-Accreditation On-Site process.

"The Burlington Police Department has been nationally Accredited through the Commission for Accreditation of Law Enforcement Agencies (CALEA) since 1989.

December 4 - 7, 2010, the Police Department will undergo its seventh re-accreditation assessment, during which operations, procedures, and services will be thoroughly reviewed and assessed in light of the 388 national standards that apply to municipal law enforcement agencies.

CALEA re-accreditation is in effect for a period of three years, during which the department must submit annual reports attesting continued compliance with the standards under which it was initially accredited, as well as with updated or new standards.

This year, the two assessors will be:

Mr. William Pease, who retired as a Captain from the Hudson, NH Police Department in 2005 after a 22-year career. He currently serves as the Nashua, NH Accreditation Manager. Mr. Pease has been a CALEA assessor since 2003 and became an assessment Team Leader in 2004.

Mr. Carl Shinner, who has been a member of the Greenbelt, MD Police Department since 1987. He currently serves that department as the Supervisor of the Office of Professional Standards and has been a CALEA assessor since 2007.

The assessors will arrive midday on Saturday, December 4, 2010, and after a meeting with the department's command staff will begin reviewing files and documents, interviewing officers and civilian staff members, visiting various facilities, and conducting ride-alongs with on-duty officers to observe first-hand how they operate. They will continue this process throughout the day on Sunday and Monday December 5-6, 2010.

From 2:00 to 4:00 pm on Monday, December 6, 2010, the public will have access to the assessors through a dedicated telephone line set up in the assessors' work area. That telephone number will be 229-3130. Also on Monday, December 6, 2010, there will be a public information session held in the Council Chamber beginning at 6:00 pm, during which time members of the public may address the assessors directly regarding the Police Department. That session will be recorded and a copy of that recording provided to the assessors. Both telephone comments and appearances at the public information session should address the department's ability to comply with CALEA standards.

On Tuesday, December 7, 2010, assessors will complete their assessment, followed by a detailed exit interview with Chief Williams, the command staff and the Accreditation Manager to review the findings of the assessment. Following their assessment of the Police Department, the CALEA assessors will file a report with the full commission, which will then determine if the department is to be granted continued accreditation status.

#### PUBLIC COMMENT PERIOD

There were no public comments.

#### CITY COUNCIL COMMENTS

Councilmember Butler expressed appreciation to all the individuals who serve on the City's Boards and Commissions and for their hard work



Mayor Wall

- Congratulation to Dr. Styles, First Baptist Church, for being selected as the grand marshal in the City's Christmas parade Saturday.
- November 28 - Christmas with the Embers - Paramount Theater
- December 3 - Citizen Appreciation - Burlington Police Department - 3:00 to 5:00 p.m.
- December 6 - Forest Hills Senior Luncheon - 11:30 a.m.
- Recognized John Nixon for his years of service with the city and wished him well as he leaves for Austin, Texas.

ADJOURN:

Upon motion by Councilmember Butler, seconded by Councilmember Faucette, it was resolved unanimously to adjourn.

---

Jondeen D. Terry  
City Clerk